

Appl. No. : 09/379,704  
Filed : August 24, 1999

### **REMARKS**

In response to the Office Action mailed August 15, 2001, Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following remarks. The specific changes to the claims are shown on a separate set of pages attached hereto and entitled VERSION WITH MARKINGS TO SHOW CHANGES MADE, which follows the signature page of this Amendment. On this set of pages, the insertions are underlined while the [deletions are in brackets and bolded].

#### **The Drawings Are In Compliance With The Rules**

The Examiner objected to the drawings under 37 CFR 1.83 (a) for failing to show every feature of the invention specified in the claims. The Examiner asserted that the "first, second, third, fourth, fifth and sixth surfaces" in claim 39 and the "seventh and eighth surfaces" in claim 40 must be shown.

Applicant respectfully submits that these features were in fact shown in the figures as filed. These features simply were not specifically identified with respect to the figures with the same language used in the claims. For example, Figure 9 shows an embodiment of the present invention that includes the limitations identified by the examiner. The specification clearly describes first, second, and third **pairs** of surfaces (which would be six surfaces), and goes on to describe those surfaces with reference to Figures 6 and 9 (see, e.g., page 11, line 22 – page 12, line 4). The "seventh and eighth surfaces" as described in Claim 40 are also shown in Figures 6 and 9, as would be recognized by one skilled in the art. Reconsideration is respectfully requested.

#### **The Reference Numeral 90 Is Used Consistently**

The Examiner objected to the disclosure asserting that the terminology associated with reference numeral "90" is inconsistent. The Examiner indicates that on page 11, line 12 and line 15, two different terminologies are applied to reference numeral "90." Reference numeral 90 does not appear on page 11. Elsewhere in the specification, reference number 90 is associated with the terms "dividing wall" "wall" and "divider," which have been used with reference to the same element of the disclosed embodiments of the invention. Thus, the usage of these terms clearly references a single element within the disclosed embodiments. Reconsideration is respectfully requested.

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**The Usage of "Attaches" in Claim 1 Is Correct**

The Examiner objected to Claim 1, and asserted that the word "attaches" in line 4, should be --attach--. Applicant disagrees with Examiner's assertion and respectfully submits that "attaches" as used in claim 1 is correct. The singular word "set," is the subject and, therefore, "attach" is the proper choice for predicate (i.e., the singular conjugation "attaches"). Reconsideration is respectfully requested.

**Claims 1-6, 23, 24, 26, 39, And 40 Are Sufficiently Definite**

The Examiner rejected claims 1-6, 23, 24, 26, 39, and 40 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

With respect to Claim 1, the Examiner asserts that the claim is misdescriptive and/or inaccurate because the claim sets forth two sets of opposing flanges attached to rails having a generally T-shape and the Examiner asserts that these elements are not supported by the disclosure or the drawings. The Examiner notes that a set requires at least two elements and asserts that Figure 6 provides support for only one set. Applicant respectfully disagrees.

Applicant submits that the specification clearly discloses that "the pusher block 112 generally comprises ... two sets of opposing flanges 118" at page 12, lines 5-12, with reference to Figure 9. The flanges can be constructed of multiple components, hence, a set. Such a position is abundantly supported by relevant cases decided by the Federal Circuit. For example, in *Hormone Research Found. v. Genentech, Inc.*, 904 F.2d 1558, 15 U.S.P.Q.2d 1039 (Fed. Cir. 1990), the Federal Circuit recited that it "is a well-established axiom in patent law that a patentee is free to be his or her own lexicographer, . . . and thus may use terms in a manner contrary to or inconsistent with one or more of their ordinary meanings." See also *Multiform Desiccants, Inc. v. Medzam Ltd.*, 133 F.3d 1473, 45 U.S.P.Q.2d 1429 (Fed. Cir. 1998) ("When the meaning of a term is sufficiently clear in the patent specification, that meaning shall apply. . . ."). Applicant, therefore, submits that Claim 1 is sufficiently definite in view of the specification and reconsideration is respectfully requested.

Claims 4, 5, and 6, which depend from Claim 1, are also definite as no further reasons are given for rejections under 35 U.S.C. § 112, second paragraph. Applicant, therefore, respectfully requests reconsideration.

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Applicant has amended Claims 3 and 23, to recite "or" in the place of "and/or." Applicant respectfully submits that the use of the word "or" in claims 3 and 23 is proper as set forth in MPEP 2173.05(h), and therefore does not render those claims indefinite. In addition, as used therein, "or" means one or the other or both and is not to be limited to an Exclusive OR type of construction (i.e., one or the other but not both). In other words, the use of "or" should be construed in the same manner as "at least one of".

With respect to Claim 26, the Examiner asserts that the recitation of the word "or" renders the claim indefinite. Applicant respectfully disagrees, and submits that the use of the word "or" in Claim 26 is proper as set forth in MPEP 2173.05(h), and Claim 26 is therefore not rendered indefinite by its use. Applicant therefore respectfully requests reconsideration.

With respect to Claim 24, Applicant has amended that claim to clarify the language. Applicant respectfully submits that Claim 24 is definite and reconsideration is requested.

The Examiner asserts that Claim 39 lacks antecedent basis for the "fifth surface" and "sixth surface." Applicant respectfully submits that Claim 39 does, in fact, have antecedent basis for the "fifth surface" and the "sixth surface." Line 13 of that claim recites "...a fifth surface and a sixth surface being located between said left side of said track and said right side of said track, said fifth surface forming a portion of said track and said sixth surface forming a portion of said product pusher, said fifth surface and said sixth surface being adapted to engage to resist separation of said product pusher from said track." Further, with respect to Examiner's assertion that there is no recitation in the disclosure or in the drawings of the first, second, third, fourth, fifth, sixth, seventh, and eighth surfaces, Applicant submits, as above, that such surfaces are shown and described in the above-identified application at, for example, page 11, line 22 – page 12, line 4 and within Figures 6 and 9.

**Claims 1 And 36 Are Not Anticipated By Wear et al.**

Claims 1 and 36 were rejected under 35 U.S.C. § 102 (b) as being anticipated by Wear et al. ('349). Applicant respectfully disagrees and disagrees with both the rejection and the Examiner's characterization of the cited reference. In short, Claims 1 and 36 both contain limitations not disclosed by Wear et al.

Wear et al. disclosed a multi-level display rack structure. The display rack of Wear et al. had tracks attached to vertically stackable frames with pusher blocks slidably attached to the tracks. The pusher blocks of Wear et al. attached to the tracks only by a single pair of inwardly-

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angled flanges (28, 29) which engaged longitudinal ribs. Wear et al did not disclose including a second pair of flanges or T-shaped rails to securely connect the pusher block with the rails under twisting movement. Thus, Wear et al. suffered from one of the problems the present invention was designed to correct.

Applicant's Claim 1 recites, among other limitations, "a pair of raised rails, each of said pair of rails having two generally T-shaped ridges, the combination further comprising a pusher block with two sets of opposing flanges, wherein each set of said two sets of opposing flanges attaches to one of said rails at more than a top and an outside surface of said rail...." Such an arrangement was not disclosed by Wear et al. For at least this reason, Applicant's Claim 1 is not anticipated by Wear et al.

Applicant's Claim 36 recites, among other limitations, "first and second guides, said first guide lying transverse to the longitudinal extensions of each of said three tracks and slidably engaging each of said three tracks adjacent to said first end of each of said three tracks, said second guide lying transverse to the longitudinal extensions of each of said three tracks and slidably engaging said second end of each of said three tracks, whereby said three tracks are capable of transverse movement along said first and second guides" Applicant respectfully submits that Wear et al did not disclose such a construction. Therefore, for at least this reason, Applicant's Claim 36 is not anticipated by Wear et al.

In view of the foregoing, Applicant respectfully requests that the rejections of Claims 1 and 36 with respect to Wear et. al. ('349) be withdrawn.

**Claims 7, 9-11, 13, 14, 22, 26, 29, And 36 Are Not Anticipated By Jackle III**

Claims 7, 9-11, 13, 14, 22, 26, 29, and 36 have been rejected as anticipated by Jackle, III et al. Applicant respectfully disagrees with Examiner's characterizations of the reference, and with the bases for the rejections.

Jackle, III discloses a product dispensing apparatus that includes a supporting tray. The tray has front and rear walls that are interconnected by side walls. A plurality of adjustable partitions extend between the front and rear walls to form side-by-side trays. A pressure feed mechanism is provided to urge products forward within the trays. As described at Col. 4, lines 40-44, the pressure feed mechanism rides on a hollow polygonal guide member or tube that is open at both ends and that has a pair of inserts received into the ends. Slots extend along the inner surface of both the front and rear walls. Col. 6, lines 23-29 of Jackle, III specifically states

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that the Jackle, III device was constructed to "prevent any transverse shifting of the inserts within the slot means." The inserts are not slidable within the slots although the inserts allow nearly infinite selection in the relative placement of each of the guide members and partitions thus providing for trays of varying widths.

The Examiner asserts that Jackle III et al teaches tracks (332) having a pair of raised rails(342) extending between the front transparent wall and a rear panel. In fact, Column 8, lines 36-37 of Jackle, III describes those elements as, "outwardly-directed flanges 342." Thus Jackle does not teach raised rails as recited in Applicant's Claim 7.

Claims 7 and 36 are the only currently pending independent claims in this group of rejected claims. Claim 7 recites, among other limitations, a frame having a front panel and a rear panel, the front panel and the rear panel each comprising a race to allow attachment of product tracks and dividers, at least two product tracks having raised rails extending between the front panel and the rear panel, and the at least two product tracks and the at least one divider being slidably attached to the races formed in the front and rear panels and allowing for horizontal movement of the product tracks and dividers. A number of these limitations were not disclosed by Jackle, III. For instance, as discussed above, Jackle, III does not disclose product tracks having raised rails. As also discussed above, Jackle, III does not disclose slidably attaching the tracks and dividers to the front and rear races. Furthermore, Jackle, III does not disclose allowing for horizontal movement of the product tracks and dividers. Accordingly, Claim 7 is not anticipated by Jackle, III and reconsideration is respectfully requested.

Claim 36 is also independent and also recites, among other limitations, three tracks slidably engaged by first and second guides. As no sliding is accommodated by Jackle, III, as discussed above, Claim 36 also cannot be anticipated and reconsideration is respectfully requested.

Claims 9-11, 13, 14, 22, 26, and 29, also are not anticipated. These claims ultimately depend from Claim 7 and define over the applied reference for at least the same reasons discussed above with respect to independent Claim 7. In addition, at least some of these claims recite further patentable distinctions. For example, Claim 29 recites, among other limitations, "...said product tracks are secured into position by falling into a series of grooves within said races on said front panel and said rear panel." For at least these reasons, Claims 9-11, 13, 14, 22, 26, and 29 also are not anticipated and reconsideration is respectfully requested.

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**Claims 1, 2, 4-6, 21, And 38-40 Are Patentable Over Jackle, III / Hawkinson / Johnson**

Claims 1, 2, 4-6, 21, and 38-40 have been rejected as unpatentable over Jackle, III in view of Hawkinson and Johnson. Applicant respectfully submits that a *prima facie* case of obviousness has not been established.

A *prima facie* case of obviousness requires, among other components, that the references, when properly combined, teach or suggest every limitation of the rejected claim. If a single limitation would not have been taught or suggested by the references, when combined, then the claim is not *prima facie* obvious. Accordingly, for the sake of the present argument, Applicant will assume that the references are properly combinable but is not admitting that such is the case.

Hawkinson, not yet discussed in the context of this Office Action, disclosed a product supporting and feeding system. The system comprised a plurality of tracks that could be linked side-by-side or that could be spaced, depending upon the application. The tracks extended from a front stop/connector that was secured to the front ends of the tracks. The tracks were not secured to anything in the rear. Thus, Hawkinson suffered from one of the problems the present invention was designed to correct. As discussed at Col. 4, lines 37-42, the front ends of the tracks contained plates that were tightly received within a set of lips. The fit in the lips was "caused to be snug so that the large tracks 10 [would] not slide along the front stop/connector 11 unless desired by the person assembling or mounting the track system." Thus, the desire was for the tracks to be locked in place and ease of movement was simply not the goal and was not achieved. This construction did not securely connect with the rails under twisting movement and exemplified another of the problems the present invention was designed to correct. Thus, Applicant respectfully submits that it would not have been obvious to one having ordinary skill in the art to provide product tracks with the surfaces shown. Moreover, the tracks of Hawkinson may have had a pair of upstanding rails; however, the slider 14 only contained one set of "flanges", which were called shoes and which had a down-and-in configuration (see Fig. 4).

Johnson et al, disclosed a display apparatus with a lengthwise-adjustable track upon which a spring-biased movable plate traveled. A friction lock was provided to secure the track at selected lengths and is incorporated into stacking supports for interconnecting an array of display units. The movable plate member engaged the track slot at its base by channels with overhanging edges to engage the top of the rails and underlying extensions. The spacing between the overhanging edges and underlying extensions was adapted to allow the movable

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plate to slide over the joint between the front and rear telescoping members as described in Column 2, lines 39-53. This requires that the underlying extensions will not contact the underside of the rails in all positions. This construction did not securely connect with the rails under twisting movement and again exemplified one of the problems the present invention was designed to correct.

With respect to Applicant's independent Claim 1, the combination of Jackle, III, Hawkinson ('869), and Johnson ('690), if proper, would not teach all the limitations of Applicant's Claim 1. Applicant's Claim 1 recites, among other limitations, "...the combination further comprising a pusher block with two sets of opposing flanges, wherein each set of said two sets of opposing flanges attaches to one of said rails at more than a top and an outside surface of said rail, whereby each of said pair of rails is captured between a corresponding set of said two sets of opposing flanges." None of the cited references, individually, or in combination, teaches or suggests each of a pair of raised rails being captured between a corresponding set of opposing flanges. Specifically with respect to Johnson, the lower flanges (56a and 56b) of Johnson did not attach to the rails (24a and 24b) in as much as they must extend sufficiently below the rails without contacting the underside thereof in order to allow the pusher block taught therein to slide over the telescoping joint. Thus the rails of Johnson are not captured by the flanges. Applicant therefore respectfully submits that all the limitations of Applicant's Claim 1 would not have been obvious to one skilled in the art based on the cited references. Applicant therefore respectfully requests reconsideration.

With respect to Applicant's Claims 2 and 4-6, Applicant respectfully submits that the subject matter of these claims would also have been un-obvious to one skilled in the art. These claims ultimately depend from Claim 1 and define over the applied references for at least the same reasons discussed above with respect to independent Claim 1. Furthermore, at least some of these claims teach further limitations also not taught or suggested by the above references either individually, or as combined. For example Applicant's Claim 5 recites, among other limitations, "... wherein said single member comprises at least one chamfer." None of the above-cited references either individually or in combination teaches chamfers formed on the pusher block as taught in Claim 5. For at least these reasons, Applicant submits that Claims 2 and 4-6 are patentable over the cited references, and respectfully requests reconsideration of the rejection.

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With respect to Applicant's independent Claim 38, the combination of Jackle, III, Hawkinson ('869), and Johnson ('690), if proper, would not teach all the limitations of Applicant's Claim 38. Claim 38 recites, among other limitations, "...said pusher block having a first set of opposing flanges and a second set of opposing flanges, said first set of flanges slidably securing said pusher block to said first rail, and said second set of flanges slidably securing said pusher block to said second rail..." Neither individually nor in combination do the cited references teach a pusher block attached to a pair of rails by first and second sets of flanges. Specifically with respect to Johnson, the lower flanges (56a and 56b) of Johnson did not attach to the rails (24a and 24b) in as much as they must extend sufficiently below the rails without contacting them in order to allow the pusher block taught therein to slide over the telescoping joint. Thus all the limitations of Claim 38 are not taught by the combination of Jackle, III, Hawkinson ('869), and Johnson ('690), and therefore Applicant respectfully requests reconsideration.

With respect to Applicant's independent Claim 39, the combination of Jackle, III, Hawkinson ('869), and Johnson ('690), if proper, would not teach all the limitations of Applicant's Claim 1. Applicant's Claim 39 recites, among other limitations, "...a sliding connection being configured between said track and said product pusher, said sliding connection comprising a first surface and a second surface in contact, and a third surface and a fourth surface in contact, said first surface and said second surface being adjacent to said right side of said track and said third surface and said fourth surface being adjacent to said left side, said first surface and said third surface forming a portion of said track and said second surface and said fourth surface forming a portion of said pusher block, said first surface, said second surface, said third surface and said fourth surface being adapted to engage to resist separation of said product pusher from said track and a fifth surface in contact with a sixth surface being located between said left side of said track and said right side of said track, said fifth surface forming a portion of said track and said sixth surface forming a portion of said product pusher, said fifth surface and said sixth surface being adapted to engage to resist separation of said product pusher from said track." None of the cited references teach fifth and sixth surfaces in contact and adapted to engage to resist separation of the product pusher from the track as recited in Applicant's Claim 39. For at least these reasons, Applicant respectfully submits that Claim 39 is patentable over the cited references, and respectfully requests reconsideration.



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Claim 40 is a proper dependent claim, and therefore contains all of the limitations of the base claim as well as additional limitations. Applicant respectfully submits, that Claim 40 is patentable over the cited references for at least the reasons discussed above with respect to its base Claim 39. Applicant therefore respectfully requests reconsideration of the rejection.

**The Rejections Of Claims 3, 8, 15-19, 23-25 27, 28 And 30-32 Are Deficient**

A number of dependent claims, which ultimately depend from Claims 1 or 7, have been rejected in other view of other combinations that are based upon the above-discussed combination. As the additional references cited do not correct the above-noted deficiencies with respect to the base claims, adding the references to the rejections for the indicated reasons does not supply the missing elements needed for the base rejection. Accordingly, each of these rejections is similarly deficient and further discussion is unnecessary.

**CONCLUSIONS**

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, Applicant respectfully submits that the above-identified application is in condition for allowance, and therefore issuance of a Notice of Allowance is earnestly solicited.

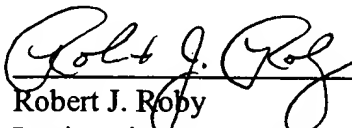
The undersigned has made a good faith effort to respond to all of the rejections and objections in the case, and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants attorney, Robert J. Roby at (949)721-6359 (direct line), in order to resolve such issues promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: 11-14-2001

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE CLAIMS:**

**Claims 1, 2, 3, 6, 7, 8, 11, 20, 21, 23, 24, 38 and 39 have been amended as follows:**

1. **(AMENDED)** A pusher block and track combination comprising a track with a pair of raised rails, each of said pair of rails having two generally T-shaped ridges, the combination further comprising a pusher block with two sets of opposing flanges, wherein each set of said two sets of opposing flanges attaches to one of said rails at more than ~~[the]~~ a top and an outside surface of said rail, whereby each of said pair of rails is captured between a ~~[each]~~ corresponding set of said two sets of opposing flanges.
2. **(AMENDED)** The pusher block and track combination of Claim 1, wherein each of said pair of rails has a tie down surface to the inside of each of said two ridges and said opposing flanges include a set of inside flanges and a set of outside flanges, said inside flanges extending further below said pusher block than said outside flanges.
3. **(TWICE AMENDED)** The pusher block and track combination of Claim 1 further comprising a spacer block which can be stably fitted onto said pusher block to increase the height ~~[and/]~~ or width to allow for use with taller or wider products, said spacer block comprising at least one flange that cooperates with said pusher block to secure said spacer block to said pusher block.
6. **(AMENDED)** The pusher block and track combination of Claim 4 wherein said single member comprises a top chamfer and a bottom chamfer.
7. **(AMENDED)** An adjustable display rack for storing and displaying products in a shelf-like orientation, said display rack comprising:
  - a frame having a front panel and a rear panel, said front panel and said rear panel being arranged generally parallel to each other and being separated by a fixed distance from one another, said front panel and said rear panel **[including]** each comprising a race[s] to allow attachment of product tracks and dividers;
  - [one or more]** at least two product tracks having raised rails extending between said front panel and said rear panel and being positioned generally transverse to said front panel;
  - a removable pusher block being slidably attached to each of said at least two product tracks;
  - a biasing member urging each said pusher block forward; and

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at least one divider being positioned between said at least two [adjacent] product tracks, wherein said at least two product tracks and said at least one dividers are slidably attached to said race formed in each of said front panel and said rear panel [races] and allow for horizontal movement of said product tracks and dividers.

8. (AMENDED) The adjustable display rack of Claim 7, wherein one of said at least two product tracks and said divider are formed in a single piece.

11. (AMENDED) The adjustable display rack of Claim 7, wherein said biasing member is attached to [said] a corresponding pusher block and [said] to a corresponding track of said at least two product tracks.

20. (AMENDED) The adjustable display rack of Claim 7, wherein said at least two product tracks further comprise clips that are slidable in the races.

21. (AMENDED) The adjustable display rack of Claim 7, wherein said at least two product tracks each comprise a pair of raised rails each having a generally T shape,

and wherein said pusher block includes at least two sets of opposing flanges, wherein each said set of opposing flanges capture an outside and inside edge of a corresponding one of said rails.

23. (TWICE AMENDED) The adjustable display rack of Claim 16, wherein said removable pusher block further comprises a spacer block which can be stably fitted onto said pusher block to increase the height [and/]or width for taller or wider products, said spacer block comprising at least one flange that cooperates with said pusher block to secure said spacer block to said pusher block.

24. (TWICE AMENDED) The adjustable display rack of Claim 23, wherein said spacer block is adapted to [optionally] be removed from the pusher block and to be used to secure said track into position, and stably increase or decrease the separation of said tracks or tracks and dividers to accommodate merchandise of different widths.

38. (AMENDED) An adjustable display rack for storing and displaying products in a shelf-like orientation, said display rack comprising a frame having a front panel and a rear panel, said front panel and said rear panel being arranged generally parallel to each other and being a fixed distance apart from each other, said front panel and said rear panel each comprising a race extending along its length, one or more product tracks generally having a first raised rail and a second raised rail, said first rail and said second rail extending generally [collinear] parallel and

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having a generally T-shaped cross-section, said product tracks extending generally transverse to said front panel and said rear panel and being connected to said front panel and said rear panel, a removable pusher block being slidably attached to said product track, said pusher block having a first set of opposing flanges and a second set of opposing flanges, said first set of flanges slidably securing said pusher block to said first rail and said second set of flanges slidably securing said pusher block to said second rail, said first set of flanges and said second set of flanges attaching to said first rail and said second rail at more than a top surface and an outside surface of said first rail and said second rail respectively such that said first set of flanges and said second set of flanges secure said first rail and said second rail respectively, and a biasing member adapted to urge said pusher block forward.

39. (AMENDED) A display rack for storing and displaying products, said rack comprising a track to underlie a plurality of products, the track extending longitudinally between a first end of said rack and a second end of said rack, said track comprising a left side and a right side, a product pusher adapted to translate along a length of said track, a spring biasing said product pusher toward said first end of said rack, a sliding connection being configured between said track and said product pusher, said sliding connection comprising a first surface and a second surface in contact, and a third surface and a fourth surface in contact, said first surface and said second surface being adjacent to said right side of said track and said third surface and said fourth surface being adjacent to said left side, said first surface and said third surface forming a portion of said track and said second surface and said fourth surface being lower surfaces of **[forming a]** portions of said pusher block, said first surface, said second surface, said third surface and said fourth surface being adapted to engage to resist separation of said product pusher from said track and a fifth surface **[and]** in contact with a sixth surface being located between said left side of said track and said right side of said track, said fifth surface forming a portion of said track and said sixth surface forming a portion of said product pusher, said fifth surface and said sixth surface being adapted to engage to resist separation of said product pusher from said track.